

**NOT DESIGNATED FOR PUBLICATION**

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F504022

DONALD BONDS, EMPLOYEE

CLAIMANT

I.C. CORPORATION,  
A SELF INSURED EMPLOYER

RESPONDENT

**OPINION FILED MARCH 6, 2008**

Upon review before the FULL COMMISSION, Little Rock, Pulaski County, Arkansas.

Claimant represented by HONORABLE STEVEN R. McNEELY,  
Attorney at Law, Little Rock, Arkansas.

Respondent represented by HONORABLE JOHN D. DAVIS, Attorney  
at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

**OPINION AND ORDER**

The claimant appeals from a decision of the  
Administrative Law Judge filed April 16, 2007.

The Administrative Law Judge entered the following  
findings of fact and conclusions of law:

- 1) The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
- 2) The stipulations agreed to by the parties and recited herein are hereby accepted as fact.

3) The respondents have failed to show that this claim is barred by the Statute of Limitations.

4) The claimant has failed to prove, by a preponderance of the evidence, that he sustained a compensable cervical injury while working for the respondents on November 3, 2003.

5) The claimant has failed to prove, by a preponderance of the evidence, that he sustained a compensable aggravation of his back injuries while employed by the respondents on November 3, 2003.

6) All other issues are rendered moot.

We have carefully conducted a de novo review of the entire record herein and it is our opinion that the Administrative Law Judge's decision is supported by a preponderance of the credible evidence, correctly applies the law, and should be affirmed. Specifically, we find from a preponderance of the evidence that the findings of fact made by the Administrative Law Judge are correct and they are, therefore, adopted by the Full Commission.

Thus, we affirm and adopt the decision of the Administrative Law Judge, including all findings and

conclusions therein, as the decision of the Full Commission on appeal.

IT IS SO ORDERED.

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OLAN W. REEVES, Chairman

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KAREN H. MCKINNEY, Commissioner

Commissioner Hood dissents.

**CONCURRING & DISSENTING OPINION**

I must respectfully concur in part and dissent in part from the majority's opinion. Specifically, I agree that the respondent has failed to prove that this claim is barred by the statute of limitations. I also agree that the claimant has failed to prove by a preponderance of the evidence that he sustained a compensable aggravation of his back injuries while employed by the respondents on November 3, 2003. However, I respectfully dissent from the majority's finding that the claimant failed to prove by a

preponderance of the evidence that he sustained a compensable cervical injury while working for the respondents on November 3, 2003. Based upon a de novo review of the record in its entirety, I find that the claimant has proved by a preponderance of the evidence that he sustained a compensable cervical injury while working for the respondent on November 3, 2003, and therefore, I must respectfully dissent on this issue.

For the claimant to establish a compensable injury as a result of a specific incident which is identifiable by time and place of occurrence, the following requirements of Ark. Code Ann. §11-9-102(4)(A)(i)(Repl. 2002), must be established: (1) proof by a preponderance of the evidence of an injury arising out of and in the course of employment; (2) proof by a preponderance of the evidence that the injury caused internal or external physical harm to the body which required medical services or resulted in disability or death; (3) medical evidence supported by objective findings, as defined in Ark. Code Ann. §11-9-102(4)(D), establishing the injury; and (4) proof by a

preponderance of the evidence that the injury was caused by a specific incident and is identifiable by time and place of occurrence. If the claimant fails to establish by a preponderance of the evidence any of the requirements for establishing the compensability of a claim, compensation must be denied. Mikel v. Engineered Specialty Plastics, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

I find that the claimant has shown by a preponderance of the evidence that his cervical injury arose out of and in the course of his employment, specifically, that the claimant's cervical injury was caused by the fall at work on November 3, 2003. The phrase "arising out of the employment" refers to the origin or cause of the accident, so the employee is required to show that a causal connection exists between the injury and his employment. Gerber Products v. McDonald, 15 Ark. App. 226, 691 S.W.2d 879 (1985). Here, the claimant testified that his job duties required him to install lights in the school buses being manufactured by the respondent. The claimant testified that after completing his work on a bus, he exited it, and was

proceeding to the next bus when he stepped in some antifreeze or oil and fell heavily to the floor. The claimant testified that he landed primarily on his lower back and buttocks, but that as he had been trying to keep his head from hitting the concrete, he had also jarred his neck in the fall. The respondent did not dispute that the claimant fell at work, and in fact, after the fall the claimant was transported by an ambulance to Conway Regional. There, the claimant saw Dr. Steven Long, the respondent's in-house physician. In Dr. Long's treatment notes of November 3, 2003, he stated that the claimant was complaining of lumbar pain and numbness in his leg and foot. He stated that the claimant slipped in antifreeze on the plant floor.

The medical records show that during a follow-up visit on November 5, 2003, two days after the specific incident, the claimant reported to Dr. Dunnagan that he had developed neck pain while on light duty. According to the doctor's report and the claimant's hearing testimony, the neck pain occurred while the claimant was climbing some

stairs to visit his supervisor's office. Arkansas Courts have long recognized that a causal relationship may be established between an employment-related incident and a subsequent physical injury based on evidence that the injury manifested itself within a reasonable period of time following the incident so that the injury is logically attributable to the incident, where there is no other reasonable explanation for the injury. Hall v. Pittman Construction Co., 234 Ark. 104, 357 S.W.2d 263 (1962). Here, it is logical to conclude that the claimant's neck pain was caused by an injury sustained in the fall at work two days earlier, after which fall the claimant was transported to the hospital in an ambulance. It is illogical to conclude that the claimant's neck pain was caused by light duty work or the simple act of walking up the stairs.

The majority has erroneously placed too much importance on the fact that the claimant had complaints of back pain concurrent with his complaints of neck pain. Here, the claimant unquestionably had problems with his lumbar spine. The medical records indicate that these issues

existed before he fell at work on November 3, 2003. The medical records also show that the claimant complained of back pain after November 3, 2003. In fact, the claimant testified, and the initial medical reports corroborate that, after the fall, the claimant was primarily focused on his back pain. However, the claimant testified and the medical records show that the claimant was also having neck pain following the fall at work. The claimant testified that he had explained to his doctors that he was also having neck pain, but that his complaints and discussions with doctors mostly focused on his lumbar problems. I find, based on the medical records indicating the pre-existing nature and the severity of the claimant's lumbar injuries, that it is not surprising, nor unreasonable for the claimant's attention, as well as that of the doctors, to be focused on this area of his body immediately after the fall at work, rather than on his neck.

Although initially not the primary concern, the claimant's neck pain did not resolve. The claimant testified that he continued having problems with his neck, and a

March 30, 2004 progress note from Dr. Long indicates that there was no change in the claimant's neck pain and that he was still suffering from a cervical strain. The claimant testified that he began to doubt that Dr. Long was going to provide him any actual treatment for his neck problems. Consequently, he petitioned the Commission for a change of physician and was directed to Dr. David Oberlander, a Conway neurologist. Dr. Oberlander first saw the claimant on November 11, 2005. In a report of that date, Dr. Oberlander outlined his findings in regard to the claimant, as well as his review of a recent cervical MRI, which was "markedly abnormal showing a large disc protrusion at C4-5 with severe canal stenosis." The doctor also noted that the claimant's neck demonstrated a "clear cut spasm." Dr. Oberlander opined that the claimant's problem was the result of his accident, and that he was going to refer him to a neurosurgeon for further evaluation. As a result of that referral, the claimant came under the treatment of Dr. Badia Adada, a neurosurgeon at the UAMS Medical Center. Dr. Adada would later perform a cervical fusion on the claimant.

The majority has erroneously disregarded not only the claimant's testimony, but also that of Dr. Oberlander. While the Commission has the authority to resolve conflicting evidence, including medical testimony, Foxx v. American Transp., 54 Ark. App. 115, 924 S.W.2d 814 (1996), the Commission may not arbitrarily disregard medical evidence or the testimony of any witness. Coleman v. Pro-transportation, \_\_\_\_ Ark. App. \_\_\_\_, \_\_\_\_ S.W.2d\_\_\_\_, (2007). Here, the claimant testified that, when he fell, he landed primarily on his lower back and buttocks. However, he stated that he tried to hold his head up to keep from hitting the concrete floor and jarred his neck in the fall. As indicated above, the claimant testified that he told Dr. Long, who is an employee of the respondent employer, that he sustained a neck injury. However, Dr. Long did not seem particularly interested in providing the claimant any treatment for that condition. It was not until the claimant requested a change of physician that this physical problem was addressed.

Dr. Oberlander made it clear that, in his opinion, the claimant's neck condition was the result of his injury

in November 2003. In Dr. Oberlander's report of September 26, 2006, he indicated that the claimant was suffering from what he described as an "urgent hard disc at the C-5 territory with cord edema consistent with a serious injury/trauma." That opinion was supplemented by a document provided by the claimant's counsel in which Dr. Oberlander checked his agreement with the statement that, within a reasonable degree of medical certainty, the major cause of the claimant's injury was his job-related accident of November 3, 2003.

Dr. Oberlander elaborated on the claimant's neck condition and reiterated his opinion as to causation in his deposition of October 25, 2006. Under questioning by the respondent's attorney, he stated that the claimant's neck condition was very serious. He stated that he normally did not prescribe dual medications for patients nor immediately refer them for surgery. However, he did both in the claimant's case because he felt that due to the extent of the damage and the edema, surgery was the only option.

Dr. Oberlander also explained what he meant by a "hard disc" in the reports. According to the doctor, the cervical herniation at C4-C5 had been present long enough that it had begun to harden and calcify. As explained by Dr. Oberlander, the claimant's condition is caused by "something that has been going on a while." The doctor stated that in the claimant's case, his disc herniation had been present long enough that it had begun to harden. He compared it to clay or "silly putty" that, when exposed to the air for too long, becomes hard. He also unequivocally stated his opinion that the claimant's neck condition would not be as severe a case as it was without some type of "inciting incident." The doctor also disagreed with the hypothetical posed by the respondent's counsel that the claimant's problems could have been caused by repetitive motion or similar cumulative trauma. Dr. Oberlander stated that his assessment of the most likely etiology of the claimant's neck problems was, "a powerful impact to the neck."

I find that the preponderance of the evidence shows that the claimant sustained an injury to his neck just as he described it in his testimony. That is, the hard fall he sustained jarred his entire body, most particularly his neck. That he sustained a herniated disc at that time is evidenced by Dr. Oberlander's explanation of a calcified disc herniation. The majority's finding that the claimant did not establish that this injury occurred at the time of the incident is punishing him for Dr. Long's inability to correctly diagnose his condition. Had the claimant's complaints of neck pain been given more credence by his initial treating physician, the claimant's condition would have been treated sooner and his medical condition resolved much earlier.

In conclusion, I find that the claimant has proved by a preponderance of the evidence that he sustained a compensable cervical injury while working for the respondent on November 3, 2003. I find that the claimant is entitled to all benefits related to this compensable injury, including payment of all medical expenses incurred and at the

direction of Dr. Oberlander, specifically, the surgery performed by Dr. Adada, as well as appropriate temporary total and permanent partial disability benefits.

For the aforementioned reasons, I must respectfully concur in part and dissent in part.

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PHILIP A. HOOD, Commissioner